

**WASHINGTON STATE HUMAN RIGHTS COMMISSION  
MEETING OF  
November 22, 2002  
Conference Call  
Olympia, WA**

**ATTENDANCE:**

Commissioners: Rudy Vasquez, Commission Chair; Charlotte Coker; Ellis Casson; Dallas Barnes; and J. Reiko Callner. A quorum was present.

Staff: Susan (Sue) J. Jordan, Executive Director; Dariush (D.K.) Khaleghi Deputy Director; Tanya Calahan, Commission Clerk; Arthur Stratton and Cheryl Strobert, District Managers; Berneta Walraven and Regina Hook, Acting District Managers; Reneé Knight, Administrative Services Manager; and Stewart Johnston, Assistant Attorney General.

**OPENING**

Commissioner Vasquez called the meeting to order at 10 a.m. A quorum was present.

Staff introduced themselves to the Commissioners.

**APPROVAL OF MINUTES OF OCTOBER 24-25, 2002**

Commissioner Callner requested that the minutes of the October 24-25, 2002 minutes be amended. Specifically add a statement to page four of the minutes that explains that although the minutes will be condensed, the meetings will be regularly recorded by audio tape by the Clerk. In addition, a typographical error should be corrected on page seven, paragraph four to read Mary "Clogston" instead of Mary "Closton." Commissioner Coker made a motion to approve the minutes of the October 24-25, 2002 Commission meeting with the noted amendments. Commissioner Callner seconded the motion. MOTION CARRIED.

### **STATUS REPORT ON FOLLOW UP ITEMS**

Commissioner Callner reported that she is taking the lead on the report for the farm worker forum. She then inquired about circulating a draft document to the other Commissioners for comments without violating the provisions of the Open Public Meetings Act. Assistant Attorney General Stewart Johnston will defer the question to Assistant Attorney General Susan Carlson for a response.

### **CASE CLOSURES**

Commissioner Callner made a motion to approve the case list for the period of October 22-November 15, 2002. Commissioner Coker seconded the motion. MOTION CARRIED.

### **EXECUTIVE DIRECTORS REPORT**

Executive Director Sue Jordan reviewed her monthly written Executive Director's Report.

She reported that Jose Rodriguez of the WA State Department of Labor & Industries (L&I) informed her that civil penalties will now be added for wage and hour claims.

Annette Taylor of L&I provided training to Commission staff regarding L&I retaliation Claims. Ms. Taylor provided written materials and statistics. Ms. Jordan reported that L&I needs help in publicizing this program

Commissioner Callner requested that Ms. Jordan provide Strategic Plan updates monthly to the Commissioners.

### **QUESTIONS TO THE ATTORNEY GENERAL'S OFFICE – LABOR & PERSONNEL**

Assistant Attorney General Stewart Johnston answered Commissioner questions regarding labor and personnel issues and provided general comments about Commission authority.

Mr. Johnston first spoke about how complaints against the Executive Director can be addressed. He stated that the Commissioners are not bound by Collective Bargaining Agreement (CBA) grievance process to investigate complaint against Executive Director.

Discussion took place regarding the differences between the CBA from 1993 and the current CBA dated April 2001. The prior contract included a step to go to the Commissioners in the grievance procedure. The current contract does not contain this

step. Other steps were eliminated to streamline the process. Authority to hear grievances was delegated to the Executive Director. Mr. Johnston commented that not all complaints are brought in the form of a grievance. The Commission can hear complaints brought before them. The subject of grievances must be covered by the CBA.

Mr. Johnston commented about Commissioner individual liability. He pointed out that Commissioners can be named as individual defendants in employment lawsuit. The Attorney General's office would provide representation in this instance. Mr. Johnston will provide information to the Commissioners through the Clerk regarding individual defense.

The Commission's central task of policy making was discussed. The Commissioners discussed the need to clearly define processes so the Commission does not engage in operational matters. They also discussed the need to adopt clear policies. Mr. Johnston commented that the AG's office could assist the Commissioners with policy development.

### **COMMISSIONER REQUESTS**

Commissioner Vasquez requested that Commission meeting mailings, even if incomplete, be sent to the Commissioners on Fridays so the Commissioners receive the packet on Saturday. An additional mailing can be done if more information needs to be mailed to the Commissioners.

Commissioner Vasquez requested that reconsiderations no longer be held via conference call because of continued technical difficulties and delay in connecting parties to the call. Commissioner Casson added that he preferred that reconsiderations be considered during face to face Commission meetings.

### **RECONSIDERATIONS**

- **Robert Smigielski v. WA State Department of Transportation  
Case Number 17ED-0393-01-2**

### **MOTION TO GRANT**

District Manager Arthur Stratton provided a summary of the case. Complainant alleged discrimination for failure to reasonably accommodate his disability (alcohol dependency) by placing him on leave without pay rather than demoting him to a position that does not require a driver's license. Complainant did not timely disclose that his driver's license was suspended. He no longer met essential job requirements. A no reasonable cause finding was issued. Complainant filed a request for reconsideration of the finding. Staff issued a recommendation to deny to the petition to the Commissioners.

Complainant appeared via telephone along with his brother Mr. Sterling. Complainant insists that he was not reasonably accommodated. He also commented that other employees were not terminated for not immediately reporting a suspended license.

After further discussion by the Commissioners, Commissioner Callner made a motion to grant the petition to determine whether or not Respondent's stated reasons for Complainant's termination were pre textual. Specifically, staff was instructed to:

- 1) Determine whether or not Respondent consistently terminated employees similarly situated to Complainant for failure to report a license suspension within twenty-four hours;
- 2) determine whether evidence of the contacts with Respondent that Complainant provided with his petition shows that Complainant requested reasonable accommodation prior to the October 25, 2001 pre-termination hearing; and
- 3) interview the superintendent that Complainant allegedly told of his situation and explored accommodation issues with.

Commissioner Coker seconded the motion. Commissioner Casson requested a roll call vote. Commission Clerk Tanya Calahan conducted a roll call vote. All Commissioners voted. MOTION CARRIED.

### **ADJOURNMENT**

There being no further business, the meeting adjourned at 11:50 a.m.

Respectfully submitted,

Tanya Y. Calahan  
Commission Clerk

**ACTION ITEMS – NOVEMBER 22, 2002**

1. **Item:** Commission Clerk Tanya Calahan will send the Commissioners a copy of the individual defense form from the Attorney General's office.

**Status:** Ms. Calahan sent the information to the Commissioners on December 6, 2002.

2. **Item:** Commission Clerk Tanya Calahan will make the corrections to the minutes of October 24-25, 2002 as detailed on page one of the November 22, 2002 minutes.

**Status:** Ms. Calahan corrected the minutes as requested.